

NOT INTENDED FOR PUBLICATION IN PRINT

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

GARY L. BRANHAM,	)	
	)	
Plaintiff,	)	
vs.	)	NO. 1:01-cv-00152-JDT-WTL
	)	
PAUL HENRY O'NEILL,	)	
	)	
Defendant.	)	

GARY L. BRANHAM, )  
)  
Plaintiff, )  
)  
vs. ) 1:01-cv-0152-JDT-WTL  
)  
JOHN W. SNOW, Secretary, United States )  
Department of Treasury/Internal Revenue )  
Service, )  
)  
Defendant. )

On December 12, 2005, a jury found in favor of the Plaintiff (“Branham”) and against the Defendant Internal Revenue Service (the “Government” or “IRS”) on Branham’s claim that the IRS discriminated against him in violation of the Rehabilitation Act of 1973, 29 U.S.C. § 791 *et seq.* On February 3, 2006, the court held a bench trial on the equitable relief issues in this case. Subsequently, on May 2, 2006, the court heard evidence and arguments specifically regarding the feasibility of instating<sup>2</sup> Branham into the position of Special Agent for the IRS. After hearing the parties’

<sup>2</sup> The court uses the term “instatement” instead of “reinstatement” because the Plaintiff never held the Special Agent position in the first place. One cannot be *reinstated* into a position that was never held; instead, one can be *instated* into such a position. The caselaw on this subject generally uses the term “reinstatement,” and, at times, both the court and the parties also have used that term. Here, the court will use the term “instatement” to more accurately depict the relief sought by the Plaintiff. Of course, the principles underlying reinstatement apply equally to the case of instatement.

evidence and arguments, and reviewing the exhibits and the applicable law, the court now issues its decision on the equitable relief pursuant to Federal Rule of Civil Procedure 52(a).

## **I. FINDINGS OF FACT<sup>3</sup>**

1. The Plaintiff is a Revenue Agent for the Small Business Self Employed Unit of the IRS.
2. The Plaintiff has Type 1 insulin dependant diabetes.
3. In 1998, the Plaintiff applied for a series 1811 Special Agent position within the IRS. This is a law enforcement position. In March 1999, the IRS notified the Plaintiff that he was tentatively selected for the Special Agent position, subject to the satisfactory outcome of, among other things, a physical examination. After an examination, the IRS medically disqualified the Plaintiff from the position due to the effects of his Type 1 diabetes.
4. On June 6, 2000, the Government notified the Plaintiff of its final decision to not select him as a Special Agent due to the effects of his Type 1 Diabetes. On December 12, 2005, a jury found that the Government's decision constituted discrimination in violation of the Rehabilitation Act.

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<sup>3</sup> Any finding of fact more properly considered a conclusion of law shall be considered as such, and vice versa.

5. Upon reaching a verdict in favor of the Plaintiff, the jury also found and recommended to the court that the Plaintiff is entitled to an award of \$78,000.00 in lost wages. The parties now stipulate that the Plaintiff's gross back pay damages, before consideration of his duty to mitigate, is \$77,732.40. (Def.'s Ex. 53.) This amount includes the back pay through the 24th pay period of 2005. (*Id.*) After subtracting the appropriate deductions, the net amount is \$46,140.74. (*Id.*) The gross prejudgment interest to date is \$18,222.23. This amount includes the stipulated gross prejudgment interest of \$15,770.04 as of February 4, 2006. (*Id.*) The court calculated the remaining gross prejudgment interest (from February 4, 2006 through June 19, 2006) using the same method that the parties used to arrive at their stipulated amount through February 4. The court used the same interest rate used by the parties—the noncorporate rate for interest on tax overpayments and tax underpayments. The rate remained at seven percent (7%) through the first two quarters of 2006 (from January 1, 2006 through June 30, 2006). Rev. Rul. 2006-12, 2006-12 I.R.B. 637-39.
6. Generally, an applicant must be under the age of thirty-seven to be eligible to apply for a Special Agent position.
7. The Plaintiff turned thirty-seven years old on March 21, 2001, nine months after the Government notified him of its final determination that he was medically ineligible for the Special Agent position.

8. Between June 6, 2000 and March 21, 2001, the Plaintiff did not apply for any other Special Agent position. The Plaintiff knew that Dr. Miller, the medical examiner who medically disqualified him from the Special Agent position, would be reviewing his medical status for additional Special Agent positions if he would have applied.
9. After March 21, 2001, the Plaintiff was no longer eligible for a Special Agent position due to his age (thirty-seven years-old).
10. The IRS maintains that it can instate the Plaintiff into a Special Agent position by making the selection date apply retroactively to June 6, 2000 pursuant to either a court order or settlement agreement.
11. If the Plaintiff were instated into the Special Agent position, he would be required to attend a six month training camp in Glynco, Georgia. According to testimony presented by the Government, while there are physical fitness components to the camp, the physical requirements are geared to the individual and are not competitive in nature. For example, the 1.5 mile run/walk does not have to be completed within any set period of time, it just has to be completed. The training is not presented as a "boot camp" sort of atmosphere with an emphasis on washing candidates out of the program. The Plaintiff appears to agree that he could accomplish the physical aspects of the training. According to his testimony, he makes a concerted effort to stay in reasonably fit condition

and his physical appearance corroborates that. So, although the Plaintiff would attend the camp at a relatively older age in comparison with the other members of an agent class, there do not appear to be any age-related physical barriers to his completion of the training camp.

However, there is reason to suspect that in a training atmosphere that involves physical fitness components and such things as firearms training and proficiency testing, some competitiveness among candidates would be likely. More importantly, beginning with the training camp, the Plaintiff would be approximately five years older than the next oldest possible new agent candidate, and would be nearly two decades older than candidates on the young side of the scale. This difference, along with the fact that he would be in the program only by virtue of a contested court order would earmark him as being clearly different than all of the other trainees.

12. The Government called three Special Agents (or former Special Agents) as witnesses at trial. Of the three witnesses, Ralph Gay, Jr. and Bill O'Connor had retired as Special Agents and are no longer employed by the IRS. Steven Ted Elder remains a Special Agent assigned to the Utah area, but no longer serves on the health and safety committee. Each of these three witnesses testified as to dangerous situations they had encountered while performing the duties of a Special Agent. Likewise, each suggested that if the Plaintiff were placed in these same situations,

he would be a direct threat to his own safety and the safety of other special agents and the public.

At the time of the IRS's decision to medically disqualify the Plaintiff, Ralph Gay was the National Selecting Officer for Special Agents within the Criminal Investigation Division of the IRS. At trial, Mr. Gay testified that, in his opinion, hiring the Plaintiff could have created "such a strong possibility of harm, that I could not accept that risk on behalf of the Internal Revenue Service." (Trial Tr. vol. II-1, 171:5-6, Dec. 6, 2005.) "The nature and severity of the harm could have been the death of Mr. Branham or one of his fellow agents." (*Id.* at 171:18-19.)

Steven Ted Elder, an experienced Special Agent who served on the health and safety committee that reviewed and denied the Plaintiff's reconsideration request, also testified regarding many dangerous situations that he has faced as a Special Agent. He likewise recommended the medical disqualification, opining that the Plaintiff represented too great of a risk to himself and others. He stated, "I want to go home at night and I want to make sure the people I work with go home at night. It's just that kind of situation, and I don't think that safety is something that you can compromise." (Trial Tr. vol. IV-1, 50:15-18, Dec. 9, 2005.)

Finally, Bill O'Connor was the chair of the health and safety committee that reviewed and denied the Plaintiff's reconsideration request. Mr. O'Connor testified that "it was very likely that [the Plaintiff] would be put in a position that he would cause a safety risk to other agents and to the public." (*Id.* at 127:24-128:1.) In response to a follow-up question regarding the degree of possible harm that the Plaintiff could cause, Mr. O'Connor answered that "[i]t could be anything from an agent being injured to a loss of life." (*Id.* at 128:3-4.)

At the Instatement Hearing, the Government produced the testimony of John M. Imhoff, the Acting Chief of Criminal Investigations for the IRS. Mr. Imhoff's testimony substantially differed from those of the above-mentioned witnesses in that he expressed a desire to have a Special Agent with the Plaintiff's qualifications. However, Mr. Imhoff did not directly address the safety concerns raised by the Agents' prior testimonies.

13. After the IRS unlawfully denied him the Special Agent position, the Plaintiff could not find comparable positions inside or outside the federal government.
14. Twenty-two of the twenty-seven Special Agents hired in the class that would have included the Plaintiff if the Government had not discriminated

against him, have already received a promotion to grade 13. Grade 13 is one grade above the journeyman level for a Special Agent.

15. Had no discrimination taken place, the Plaintiff likely would be at a grade 13 position as a Special Agent.
16. The Plaintiff is currently a grade 12, step 6 Revenue Agent. Grade 12 is also one grade above the journeyman level for a Revenue Agent.
17. In April 2005, the Plaintiff became eligible to seek grade 13 positions as a Revenue Agent. He has not yet applied for a grade 13 Revenue Agent.
18. Many of the current Revenue Agents have reached or soon will reach retirement age. As such, the IRS currently has a desperate need for Revenue Agents, including grade 13 Agents. In 2005, the IRS announced 773 vacancies for grade 13 Revenue Agent positions.
19. As of December 10, 2005, the IRS employed about 10,695 Revenue Agents. Of that total, 2347 were grade 12 Agents (including the Plaintiff), and 5696 were grade 13 Agents.
20. As of December 10, 2005, the IRS employed about 2162 Special Agents. Of that total, 1516 were grade 13 Agents, and only 109 were grade 14 Agents.

21. It is far more likely that the Plaintiff will be able to obtain a promotion to a grade 13 Revenue Agent position as compared to what his chances would have been to obtain a grade 14 Special Agent position had no discrimination occurred.
22. The IRS automatically contributes one percent of an employee's basic salary to the employee's Thrift Savings Plan ("TSP"). However, if the employee chooses to contribute to the TSP, the IRS will match that contribution up to five percent of the employee's basic pay.
23. Prior to 2000, the Plaintiff contributed ten percent of his basic salary to his TSP. From 2000 to January 2006, the Plaintiff made no contributions to his TSP. In February 2006, the Plaintiff once again began contributing ten percent of his basic salary to his TSP.
24. Upon retirement, federal employees may be entitled to a retirement annuity called a basic Federal Employees' Retirement System ("FERS") benefit. The amount a federal employee receives in basic FERS annuity depends on factors such as the length of the federal employment, the employee's average salary prior to retirement, and the federal position from which the employer retired.
25. The mandatory retirement age for a Special Agent is fifty-seven years. The Plaintiff will be fifty-seven on March 21, 2021. If he retires as a

federal employee on his fifty-seventh birthday, he will have worked thirty-four years and five months for the Government.

26. If no discrimination had occurred and the Plaintiff were to retire as a Special Agent, he would likely be at a grade 13, step 9 level at his retirement. He would receive a basic FERS annuity of \$72,220.07.
27. If the Plaintiff retires as a Revenue Agent on his fifty-seventh birthday, and if he mitigates his damages by obtaining a grade 13 position by June 2008, then he will be at a grade 13, step 8 level at his retirement. He will receive a basic FERS annuity of \$50,660.78.
28. The Plaintiff has lost 126 hours of vacation time over the last six years in pursuit of his discrimination claim against the Government.

## **II. DISCUSSION**

The Rehabilitation Act prohibits discrimination against individuals with disabilities by recipients of federal funding. 29 U.S.C. § 794(b)(3). The parties agree that the Rehabilitation Act entitles Branham to the remedies authorized by Title VII. See 29 U.S.C. § 794a(a)(1). Title VII authorizes the court to “order such affirmative action as may be appropriate, which may include, but is not limited to, reinstatement or hiring of employees, with or without back pay . . . or any other equitable relief as the court deems appropriate.” 42 U.S.C. § 2000e-5(g)(1). The term “any other equitable relief” includes an award of front pay where reinstatement is not available. *Williams v. Pharmacia, Inc.*,

137 F.3d 944, 951-52 (7th Cir. 1998). Branham seeks back pay and, in lieu of instatement, front pay, lost retirement pay, and lost vacation time.

## **1. Back Pay**

The parties stipulate to the calculated back pay figures. However, while the Government agrees that the stipulated back pay amount is the appropriate amount of relief if the court orders full back pay, it argues that because the Plaintiff has failed to mitigate his back pay damages, he should not be entitled to the full back pay amount. Thus, the parties' stipulation only extends to what the back pay amount should be absent the Government's failure to mitigate claim.

Once a plaintiff establishes the amount of damages that resulted from a defendant's conduct, the defendant has the burden of proving that the plaintiff failed to mitigate his damages or that the damages were less than what he claims. *Hutchison v. Amateur Elec. Supply, Inc.*, 42 F.3d 1037, 1044 (7th Cir. 1994). Here, the parties stipulate as to the amount of back pay damages. The burden is now on the Government to prove that the Plaintiff failed to mitigate his back pay damages.<sup>4</sup>

The Government argues that the Plaintiff has failed to mitigate his damages because he failed to apply for comparable positions or for additional Special Agent

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<sup>4</sup> The Government did not include in its pleadings, and has never amended its pleadings to include the failure to mitigate defense. However, as discussed in the court's February 1, 2006 Entry (Docket No. 100), the Plaintiff had sufficient notice of the IRS's intention to assert the failure to mitigate defense and is "free from surprise" of the defense. *DeValk Lincoln Mercury, Inc. v. Ford Motor Co.*, 811 F.2d 326, 334 (7th Cir. 1987).

positions before March 21, 2001. The Government's final (discriminatory) determination to medically disqualify the Plaintiff and not select him for the Special Agent position due to the effects of his diabetes occurred sometime between March and June 2000. The Plaintiff did not receive notice of the Government's final determination until June 6, 2000. Nine months later, on March 21, 2001, the Plaintiff turned thirty-seven years old and was no longer eligible to apply for Special Agent positions. Between June 6, 2000 and March 21, 2001, the Plaintiff did not apply to any other Special Agent positions.

The evidence does not support the Government's argument that the Plaintiff failed to mitigate his back pay damages. After being denied the Special Agent position, the Plaintiff looked for comparable positions outside the federal government; however, he found no positions that paid as well as his Revenue Agent position or that would compensate him for his pension that he would lose if he left the Government. Likewise, he did not apply for any comparable Special Agent positions within the Government because he knew that Dr. Miller, the medical examiner who medically disqualified him from the Special Agent position, likely would be reviewing his medical history once again. After March 21, 2001, the Plaintiff was no longer eligible to apply for Special Agent positions. These facts fail to prove that the Plaintiff has not mitigated his back pay damages.

Because the court finds no failure to mitigate back pay damages, it will award the Plaintiff the full stipulated amount of back pay. The parties agree that the gross back pay amount is \$77,732.40, which represents back pay through the 24th pay period of 2005. (See Def.'s Ex. 53.) After the appropriate deductions, the net amount is

\$46,140.74. The net amount represents the agreed gross amount minus federal taxes, social security taxes, medicare taxes, state taxes, group life insurance payments, Thrift Savings Plan contributions, and basic FERS pension payments. (*See id.*) If the Government chooses to pay the Plaintiff the net amount of \$46,140.74 in lieu of the gross amount, then the Government is responsible for making the appropriate payments to these third parties in the specific amounts listed on Defendant's Exhibit 53. Likewise, the court awards the Plaintiff prejudgment interest, which is \$18,222.23 to date. This amount includes the stipulated gross prejudgment interest of \$15,770.04 as of February 4, 2006. (*Id.*) The court calculated the remaining gross prejudgment interest (from February 4, 2006 through June 19, 2006) using the same method that the parties used to arrive at their stipulated amount through February 4, 2006. The court used the same interest rate used by the parties—the noncorporate rate for interest on tax overpayments and tax underpayments. The rate remained at seven percent (7%) through the first two quarters of 2006 (from January 1, 2006 through June 30, 2006). Rev. Rul. 2006-12, 2006-12 I.R.B. 637-39. The prejudgment interest is a gross amount, so the Plaintiff would be responsible for taxes and similar liabilities associated with the award of prejudgment interest.

## **2. Feasibility of Instatement**

Prior to February 3, 2006, the IRS had consistently maintained that instatement was not a feasible form of relief for Mr. Branham. However, at the commencement of the February 3, 2006 hearing on equitable relief, the Government announced that, for the first time in the five-year existence of this case, the IRS believed that instatement

would be a feasible and appropriate form of relief. On February 10, 2006, the IRS set forth terms describing how instatement would be accomplished. (Instatement Hr'g, Def.'s Ex. C.) The Government provided further detail of these terms by submitting the April 28, 2006 letter (*id.*, Def.'s Ex. D) indicating that an endocrinologist would review Mr. Branham's medical status prior to any medical disqualification, and by submitting its Notice Regarding Subsequent Developments (Docket No. 145) asserting that the IRS arranged for Dr. Bruce Bode to be the reviewing endocrinologist.

Although instatement is usually the preferred remedy, instatement is not always appropriate or feasible. As Judge Ripple admonished,

“[t]he equitable remedy of [i]nstatement requires the court to strike a delicate balance. On the one hand, [i]nstatement is the preferred remedy for victims of discrimination, and the court should award it when doing so is feasible. On the other hand, a court is not required to [i]nstate a successful plaintiff where the result would be a working relationship fraught with hostility and friction.

*Bruso v. United Airlines, Inc.*, 239 F.3d 848, 861 (7th Cir. 2001) (citations omitted). It may be infeasible to order instatement in a case in which the court risks becoming “embroiled in each and every employment dispute” that arises between the plaintiff and the employer following the plaintiff's instatement. *Id.* at 861-62. “When [i]nstatement is infeasible or inappropriate, front pay may be appropriate to make the plaintiff whole.” *McNeil v. Econ. Lab., Inc.*, 800 F.2d 111, 118 (7th Cir. 1986).

Courts typically award front pay in lieu of reinstatement (or instatement) when friction and hostility exist between the employer and employee. See *Hutchison v.*

*Amateur Elec. Supply, Inc.*, 42 F.3d 1037, 1046 (7th Cir. 1994). The circumstances here are admittedly unique in that the Plaintiff has continued his employment with the IRS throughout his five-year lawsuit against the same. As a revenue agent, the Plaintiff has maintained a healthy and amicable working relationship with his employer, the IRS. In fact, the Government points to this fact as evidence that no hostility or friction exists between the IRS and the Plaintiff. However, the court also recognizes that the IRS is a large agency that contains multiple and distinct departments. While the Plaintiff has maintained a healthy employment relationship with the revenue agent side of the IRS, the same cannot be said of the Special Agent division. In fact, the Government called three Special Agents as witnesses at trial.<sup>5</sup> To one extent or another, each witness testified as to personal experiences involving dangerous field situations, and each suggested that if the Plaintiff were placed in these same situations, he would be a direct threat to the safety of other special agents and the public. Although the Government and the IRS has since portrayed an opposite view regarding the Plaintiff's ability to perform the essential functions of the position, the testimony at trial clearly demonstrates friction, and perhaps hostility, between the Plaintiff and others within the Special Agent division of the IRS.

In addition, it doesn't require speculation for the court to be concerned with how the Plaintiff would fit in with his fellow trainees and, later, Special Agents. Beginning with the training camp, the Plaintiff would be approximately five years older than the

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<sup>5</sup> Of the three witnesses, Ralph Gay, Jr. and Bill O'Connor have since retired as Special Agents and are no longer employed by the IRS. Ted Elder remains a Special Agent assigned to the Utah area, but no longer serves on the health and safety committee.

next oldest possible new agent candidate, and would be nearly two decades older than candidates on the young side of the scale. This difference, along with the fact that he would be in the program only by virtue of a contested court order, would earmark him as being clearly different than all of the other trainees. This differential would continue with him throughout any subsequent assignments as a Special Agent. It can be especially difficult for an employee to develop a rapport with fellow workers when he comes to the workplace years older than a newer worker usually does, to say nothing about a worker who is compelled to be inserted into the workplace by a court order. When choice assignments are given, or when experienced Special Agents seek help from others, it is doubtful that the newest of the agents assigned to the office are in line for that type of selection. By the time the Plaintiff would 'make his bones' (in the sense of earning his reputation and credentials) he would nearly be eligible for retirement.

The history of the litigation between the two parties likewise foretells the probability of future disputes that would require the court's involvement. First, both parties have vigorously contested almost all aspects of this case, and, in the five-year history of this case, there has been very little that the parties have agreed upon. In the context of instatement, the Plaintiff has expressed doubt as to whether he would receive fair treatment from the IRS if instated into the Special Agent position. Certainly, it is not his preferred remedy and one that he consistently argues is unreasonable given his age and his reliance on the IRS's prior position. The court has no doubt that, at the first sign of what the Plaintiff would subjectively consider unfair treatment while serving as a

Special Agent, the parties would be back in this courtroom and the court would be resolving yet another contested issue between these parties.

In addition, the court foresees similar problems with regard to future medical reviews of this Plaintiff. It appears that the IRS is taking important steps toward developing a nondiscriminating and objective method to review the medical qualifications of those with diabetes. In particular, in the event a medical review officer initially determines that Mr. Branham does not meet the medical qualifications due to his diabetes, the IRS will allow a board certified endocrinologist to review his medical status before medically disqualifying him from the position. (Instatement Hr'g, Ex. D.) In fact, as suggested by the Plaintiff's counsel, the IRS has arranged for Dr. Bruce Bode to serve as the reviewing endocrinologist. (Not. Subsequent Developments, Docket No. 145.) Nevertheless, the IRS has failed to point to objective medical criteria by which the Plaintiff will be reviewed and instead chooses to rely on the medical opinion of the reviewing doctors. This choice will likely lead to future disputes between these two parties. For example, the Plaintiff vigorously protests the use of A1C levels as a measure of medical qualification for the position. The court does not decide here whether it is appropriate for the IRS to rely on these medical opinions instead of developing specific medical criteria related to diabetes; however, due to the strong opposing opinions by both parties on this issue, the court foresees future hostility and litigation between these two parties if, for example, the Plaintiff were to have a less-than-perfect A1C level at some point in the future. Given the Plaintiff's history of less-than-perfect A1C levels, it is likely that this would become an issue during the course of

the Plaintiff's employment. This is the type of situation in which the court risks becoming "embroiled in each and every employment dispute," *Bruso*, 239 F.3d at 861-62, or at least those disputes that relate to the medical qualifications of this Plaintiff.

Furthermore, the Government's Notice of Subsequent Developments (Docket No. 145), which notified the court more than three weeks following the May 3, 2006 Instatement Hearing that the IRS has arranged for Dr. Bruce Bode to serve as the reviewing endocrinologist, is evidence that the Government's procedures governing the Plaintiff's instatement are not fully established, but are instead still evolving. The fact that these procedures still continue to evolve suggests the need in the future for the court's continued supervision, and even micro-managing, of the instatement remedy. A remedy such as this, clearly calling for future involvement by the court, is not an appropriate remedy.

The court is also troubled by the change in the Government's position regarding instatement and the Plaintiff's reliance on that position. Prior to the February 3, 2006 hearing, the IRS had consistently maintained that instatement was not a feasible form of relief for Mr. Branham. After years of being told this by the IRS, and knowing of the age restriction preventing individuals to enter the program after their thirty-seventh birthdays, the Plaintiff effectively moved on with his life. In particular, he remarried and had a baby. Having a child is a major life decision. By the time he decided to have a baby, he was over thirty-seven years old and understood the IRS's position to be that instatement was no longer possible. The court recognizes the Plaintiff's reliance on the IRS's prior position and the Plaintiff's decision to move on with his life.

Finally, the court is still faced with the issue of how to manage instatement with the likely probability of an appeal by the IRS.<sup>6</sup> An appeal would foster uncertainty regarding the Plaintiff's permanent status as a Special Agent. The Government produced the testimonies of the IRS Acting Chief of Criminal Investigation and of the head of the Indianapolis Criminal Investigation office, who both testified that, even if the Government won an appeal, they would like to keep the Plaintiff on as a Special Agent. However, these testimonies are not entirely helpful to the court because the IRS is not bound by what these two individuals would "like to do" with the Plaintiff. It is doubtful that either the Plaintiff or the IRS would be confident that instatement would be permanent because it is so likely that the IRS would seek to overturn such a remedy through appeal. The likelihood of a pending appeal is another reason why the court finds it inappropriate and infeasible to order instatement in this case.

Considering all these factors, the court concludes that it would not be feasible to grant instatement in this particular case. Accordingly, the court will discuss the relief that the Plaintiff seeks in lieu of instatement.

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<sup>6</sup> The court has little doubt that the Government will take an appeal of this case. For example, the Government has expressed, on multiple occasions, its disagreement with how the Seventh Circuit allocated the burden of proof on the direct threat issue in this case in *Branham v. Snow*, 392 F.3d 896, 906-07 (7th Cir. 2004). (See Def.'s Proposed Jury Instruction No. 17, Docket No. 12; Def's Objections to Pl.'s Proposed Jury Instructions, Docket No. 33, at 6; Def.'s Objections to Final Jury Instructions, Docket No. 68, at 1-2.) Of course, the court understands why it would be important for the Government to take an appeal on this issue because, not only is the allocation of the burden applicable to the IRS in this case, but it could apply to other governmental agencies in future cases involving the direct threat issue. This ruling, alone, is reason enough to motivate the Government to seek appeal of this case. There is no reason for the court to believe that granting instatement would reduce the probability of an appeal.

### 3. Front Pay

When reinstatement (or instatement) is not a feasible alternative, “the district court has discretion to award front pay in order to make the plaintiff whole.” *Miles v. Indiana*, 387 F.3d 591, 599 (7th Cir. 2004). Front pay is “a lump sum . . . representing the discounted present value of the difference between the earnings an employee would have received in his old employment and the earnings he can expect to receive in his present and future, and by hypothesis inferior, employment.” *Downes v. Volkswagen of Am., Inc.*, 41 F.3d 1132, 1141 n.8 (7th Cir. 1994) (quoting *McKnight v. Gen. Motors Corp.*, 908 F.2d 104, 116 (7th Cir. 1990)); see also *Pollard v. E.I. du Pont de Nemours & Co.*, 532 U.S. 843, 846 (2001) (“[F]ront pay is simply money awarded for lost compensation during the period between judgment and reinstatement or in lieu of reinstatement.”). “In deciding whether to award front pay, the court considers such factors as whether the plaintiff has a reasonable prospect of obtaining comparable employment, whether the time period for the award is relatively short, whether the plaintiff intended to work or was physically capable of working and whether liquidated damages have been awarded.” *Downes*, 41 F.3d at 1141 (citations omitted). Of course, “[t]he familiar common law duty of mitigating damages is imposed: the employee must make a diligent search for comparable employment.” *Mattenson v. Baxter Healthcare Corp.*, 438 F.3d 763, 771 (7th Cir. 2006). The Plaintiff is “required to present persuasive evidence of inability to find a substitute job.” *Id.*

The Plaintiff asks the court to award him a total of fifteen years of front pay, calculated until he will reach fifty-seven years old, the mandatory retirement age for a

Special Agent. The Plaintiff begins his front pay calculations with the alleged amount he argues he would have made as a Special Agent and subtracts it by the alleged amount he will make as a Revenue Agent during the same time period. The Plaintiff's calculations assume that if he were hired as a Special Agent in 2000, then he would now be at grade 13, step 1, which is one grade above the journeyman level where he would have begun as a Special Agent in 2000. The Plaintiff believes this is a reasonable assumption because twenty-two of the twenty-seven Special Agents hired in the same class that would have included the Plaintiff had no unlawful discrimination taken place, have already been promoted to a grade 13 level. The calculations include the automatic steps in grade based on length of service (e.g., after one year, the salary is bumped up to grade 13, step 2). By the Plaintiff's fifty-seventh birthday on March 21, 2021, the salary is at grade 13, step 9. The calculations assume no additional promotion to a grade 14 level. In calculating the present value of his actual Revenue Agent salary through the same time period, the Plaintiff's calculations begin at his current grade 12, step 6 level, which is also one grade above the journeyman level for a Revenue Agent position. The calculations include the automatic steps in grade based on length of service, ending at a grade 12, step 10 level on March 21, 2021. However, the calculations assume no promotion to a grade 13 level. The Plaintiff reduced the front pay calculations for several offsets and deductions pursuant to 5 C.F.R. § 550.805(e). The Plaintiff's calculations conclude that the Plaintiff is entitled to a net present value of \$320,073.00 in front pay.

The court is troubled by the lengthy time period for which the Plaintiff seeks front pay. Seventh Circuit caselaw provides the court with substantial guidance discouraging district courts from awarding front pay for long periods of time. See, e.g., *Mattenson*, 438 F.3d at 771 (affirming the district court's decision not to award any front pay even though the plaintiff "probably won't be able to find another job that pays him" the amount he was paid prior to the discriminatory act); *Biondo v. City of Chi.*, 382 F.3d 680, 691 (7th Cir. 2004) (holding that a front pay award of twelve years exceeds the scope of a district court's equitable discretion); *McKnight*, 973 F.2d at 1371-72 ("Damages in employment discrimination cases are not intended to insure a plaintiff's future financial success. . . . Damages should ordinarily extend only to the date upon which 'the sting' of any discriminatory conduct has ended. . . . The longer a proposed front pay period, the more speculative the damages become."). Here, the Government's discriminatory act occurred in 2000. The Plaintiff will receive almost six years of back pay, and he seeks an additional fifteen years of front pay. In total, the Plaintiff asks the court for financial compensation to cover a twenty-one year time period.

In making such a request, the Plaintiff ignores his duty to mitigate damages. "[F]ront pay cannot extend past the time a reasonable person needs to achieve the same or an equivalent [financial] position in the absence of discrimination." *Biondo*, 382 F.3d at 691. Thus, in determining what front pay amount would be equitable, the court should attempt to construct a remedy that "gives the plaintiff[] an incentive to compete for promotions," instead of an amount that "all but guarantees plaintiff[] the highest possible salary through retirement without the need to seek advancement or perform

the duties of the higher positions.” *Id.* at 691-92. Here, the Plaintiff became eligible in April 2005 to seek promotions to a grade 13 position as a Revenue Agent. Lucy Robinson, human resource specialist for the IRS, testified that the IRS currently has a desperate need for Revenue Agents, including grade 13 agents, because many of the baby boomers who currently hold those positions are and will be retiring in the next few years. In 2005 alone, the IRS made 773 vacancy announcements for grade 13 Revenue Agent positions. (Def.’s Ex. 45.) In fact, the total number of IRS grade 13 Revenue Agents is 5696, compared to only 2347 grade 12 Revenue Agents.

The Plaintiff provides two reasons why he believes the front pay calculations should not consider the possibility of being promoted to a grade 13 Revenue Agent position. First, the Plaintiff argues that a grade 13 Revenue Agent position is two grades above the journeyman level, while a grade 13 Special Agent position is only one grade above the journeyman level. So, to compare apples to apples, the Plaintiff argues that the front pay calculations should compare the salary differences between the two jobs at the same number of levels above the journeyman level. However, basing the comparison solely on the difference in journeyman levels would be oversimplifying the analysis. Instead, the court should also consider the likelihood of being promoted from a grade 12 to a grade 13 Revenue Agent, as compared to the likelihood of being promoted from a grade 13 to a grade 14 Special Agent. The evidence suggests that the Plaintiff is far more likely to be promoted to a grade 13 Revenue Agent position (two grades above the journeyman level) than what his chances would have been of being promoted to a grade 14 Special Agent position (also two grades

above the journeyman level) had the discrimination not occurred. The following is an appropriate comparison:

Revenue Agent: As of December 10, 2005, the IRS employed 10,695 Revenue Agents.<sup>7</sup> (Def.'s Ex. 42.) Of that total, 2347 were grade 12 agents (including the Plaintiff). However, 5696 were grade 13 agents. There is more than a 2:1 ratio of grade 13 Revenue Agent positions to grade 12 Revenue Agent positions. In addition, the IRS currently has a desperate need for more Revenue Agents, including grade 13 agents. In 2005 alone, the IRS made 773 vacancy announcements for grade 13 Revenue Agent positions. (Def.'s Ex. 45.)

Special Agent: As of December 10, 2005, the IRS employed 2162 Special Agents. Of that total, 1516 were grade 13 Special Agents (which is where the Plaintiff claims he would be). However, only 109 were grade 14 agents. This is a close to a 1:14 ratio of grade 14 Special Agent positions to grade 13 Special Agent positions. Plus, there is no evidence in the record of a similar hiring need among Special Agents.

As a grade 12 Revenue Agent, there are more than two-times *more* positions at the next level. However, as a grade 13 Special Agent, there are fourteen-times *less* positions at the next level. Because of the vastly larger ratio of positions at the next

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<sup>7</sup> This total includes management positions at the grade 14 level. However, these management positions have been "pay banded" and should no longer be considered with this total. The evidence suggests that the total should actually be a few hundred less than 10,695 because the actual number of grade 14 Revenue Agents is far less than 953. Nevertheless, this difference does not affect the court's analysis. The court is concerned with the likelihood of being promoted from a grade 12 to a grade 13 Revenue Agent, as compared to the likelihood of being promoted from a grade 13 to a grade 14 Special Agent. Thus, the number of grade 14 Revenue Agents is largely irrelevant.

level for a grade 12 Revenue Agent as compared to a grade 13 Special Agent, and due to the current need to increase hiring of Revenue Agents, the court must conclude that it is far more likely the Plaintiff will be able to obtain a promotion to a grade 13 Revenue Agent position as compared to what his chances would have been to obtain a grade 14 Special Agent position. Thus, while the Plaintiff's assumption that he would not have received an additional promotion as a Special Agent may be somewhat reliable, the same is not true concerning the Revenue Agent position: he very likely could receive a promotion if he seeks one.

The Plaintiff also claims that these numbers are not representative of his situation because he works in the Small Business Self Employed division of the IRS and the majority of the grade 13 Revenue Agent positions are in the Large and Midsized Business division. He states that his skill set and acumen are better suited for the Small Business Self Employed division. However, the court should provide a front pay remedy that gives the Plaintiff an incentive to seek and compete for promotions, including the incentive to "perform the duties of higher positions." *Biondo*, 382 F.3d at 691-92. If the Government had not discriminated against him, he would have had to learn multiple new skill sets in order to perform the duties of a Special Agent. Likewise, the Plaintiff has testified that there is no bar that would prevent him from transferring to another division of the IRS. While learning new skill sets and seeking promotions would require hard work on the part of the Plaintiff, the same hard work is required of all employees who seek promotions in the workplace. Accordingly, the fact that the Plaintiff would have to learn new skills in order to transfer to a different division within

the IRS is not highly relevant to the court's determination of whether the Plaintiff can mitigate his damages.

Finally, the Plaintiff argues that it would be unreasonable to expect him to get a promotion within a short time of becoming eligible for such promotion. To illustrate this concern, the Plaintiff states that he first became eligible for a promotion to grade 12 Revenue Agent in 1989. He applied to some grade 12 positions, but did not obtain a grade 12 position until 2004, fifteen years after he first became eligible. He concludes that it would take him an equally long time before he would obtain a grade 13 Revenue Agent promotion. Again, this argument does not hold water in light of the evidence before the court. As stated above, the IRS employs 2347 grade 12 Revenue Agents. There is no evidence as to how many of those agents are eligible for grade 13 positions, but it is clear from the testimonies of the Plaintiff and Ms. Robinson that many of these agents are not yet eligible for grade 13 positions (it is for this reason that the IRS sometimes fills grade 13 vacancies from outside the IRS). Yet, in 2005 alone, there were 773 job openings for grade 13 Revenue Agent positions. As Ms. Robinson testified, the need will continue to grow over the next few years as more of the baby boomers retire. From this evidence, the court concludes that an eligible grade 12 Revenue Agent has ample opportunity to seek and obtain grade 13 positions. It would not take much time for a reasonable, eligible grade 12 employee to obtain a grade 13 position in light of the current need.

For the reasons stated above, the court feels that the Plaintiff's requested fifteen years of front pay would be far in excess of what equity demands and is thus not

appropriate in this case. Following the mandate of the Seventh Circuit cases, the court wishes to set a duration of front pay that, while making the Plaintiff whole, would also provide the Plaintiff with incentive to seek advancement as a Revenue Agent. There were 773 grade 13 Revenue Agent openings in 2005 alone, and the evidence shows that the Plaintiff failed to seek any of these positions. The demand for Revenue Agents, including grade 13 agents, will continue to increase. Given the current demand for grade 13 Revenue Agents, the court believes that a reasonable grade 12 agent would be able to obtain a grade promotion within two years. Thus, in the interest of equity, the court will award the Plaintiff front pay calculated until June 2008 (through the 13th pay period of 2008).

The Plaintiff asks that his front pay include a five percent Thrift Savings Plan (TSP) contribution by the Government. The TSP is a retirement savings and investment plan for federal employees, similar to "401(k)" plans many private corporations offer their employees. The IRS automatically contributes one percent of the employee's basic pay to the TSP. But, if the employee chooses to contribute to his TSP, the IRS will match that contribution up to five percent of the employee's basic pay.

Prior to 2000, the Plaintiff contributed ten percent of his basic pay to his TSP, while the IRS matched it up to five percent. But in 2000, the Plaintiff stopped making contributions and, consequently, the IRS has only contributed one percent to the Plaintiff's TSP since 2000. Only now, after the jury has returned a verdict in his favor and he expects to receive front pay including lost TSP contributions, has the Plaintiff begun contributing to the TSP once again. Because he is now contributing ten percent

to the TSP, the Plaintiff asserts an entitlement a front pay calculation assuming a five percent matching TSP contribution by the IRS. However, the Plaintiff's very recent resumption of contributions to his TSP is not illustrative of what he would have been contributing to his TSP. Instead, his last six years of no contributions serves a more useful and predictable pattern in determining what he would be contributing to his TSP over the next couple of years. Accordingly, the court will include with the Plaintiff's front pay award his lost TSP contributions in the amount of one percent, and not the requested five percent.

Plaintiff's Exhibit 39, Appendix A consists of Dr. Bullock's calculation of the net present value of the Plaintiff's front pay and TSP (5%) through his retirement in 2021. Because the court will only award a TSP contribution of one percent, the court must recalculate the Plaintiff's lost front pay/TSP benefits. Also, the court's calculations of front pay ends in June 2008, when the court expects the Plaintiff to mitigate his damages and obtain a grade 13 Revenue Agent position. In recalculating, the court uses the same method and formulas already in evidence and relied upon by Dr. Bullock. The court has attached its calculations of the Plaintiff's lost front pay and TSP (1%) benefits as Appendix 1 to this entry. The following is an explanation of the court's calculations:

The front pay calculations begin where the awarded back pay left off—at the 25th pay period of 2005—and terminate at the end of the 13th pay period of 2008 (June). The bi-weekly pay is based on the annual salary of both positions at the relative grade and scale. The court relies on Dr. Bullock's calculated future grade level salaries listed

in Plaintiff's Exhibit 35.<sup>8</sup> The difference in pay between the two positions, calculated for each pay period, matches Dr. Bullock's calculations. The court then calculates the TSP award at an additional one percent of the difference in pay.<sup>9</sup> Again following Dr. Bullock's lead, the court reduced the front pay for several offsets and deductions pursuant to 5 C.F.R. § 550.805(e). Specifically, the court deducted 8.45%, representing the difference in pay for Social Security and Medicare taxes (7.65%) and for the basic FERS benefit contributions (0.8%). In addition, the court deducted 0.5% of the total bi-weekly wages of a Special Agent for the higher FERS benefit given to law enforcement officers. The court then adds together the difference in pay and the TSP award and subtracts from that total the offsets, arriving at the net future wages and TSP. This amount represents the net difference between the bi-weekly pay of the two positions. Then, the court calculates the present value, as of June 19, 2006, of the net future pay wages and TSP awards. Finally, the sum of the present values of net future pay wages and TSP awards represents the total net present value of the Plaintiff's lost front pay and TSP contributions, which is \$47,529.46. Thus, the court awards the Plaintiff a front pay and TSP contribution in the amount of \$47,529.46, calculated as the present value on June 19, 2006.

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<sup>8</sup> Plaintiff's Exhibit 35 lists the future salaries of the grade 12 Revenue Agent position and the grade 13 Special Agent position. These salaries are based on an average annual cost-of-living adjustment ("COLA") of 3.81 %. Dr. Bullock calculated the average COLA at 3.81 % based on the COLAs awarded to federal employees over the last 8 years. (See Pl.'s Ex. 39, App. B.) The salary table for the Special Agent position includes a 25% pay increase, which, for reasons stated further below, is included in the calculation of the front pay award.

<sup>9</sup> Dr. Bullock performed a similar calculation, assuming a five percent contribution instead of a one percent contribution.

#### **4. Leap Pay Adjustment**

Special Agents (1811 positions) are eligible to receive a 25% increase in pay, known as “leap pay,” if they work an average of fifty hours per week. If the Government had not discriminated against the Plaintiff, he would have been eligible to work fifty hours per week and receive leap pay. As a Revenue Agent, the Plaintiff is not eligible for leap pay. However, the Plaintiff only works an average of forty hours per week as a Revenue Agent.

In his calculations of the Plaintiff’s lost front pay and retirement benefits, Dr. Bullock uses an adjusted Special Agent salary, assuming the 25% leap pay increase. The court understands the reasoning behind using the leap pay adjustment when comparing the two salaries: the Government’s discrimination deprived the Plaintiff of the chance to work the extra ten hours per week to earn the leap pay. However, the court is hesitant to include the leap pay in the calculations for two reasons. First, the idea that the Plaintiff should be rewarded for ten hours of work per week that he will never have to perform greatly troubles the court. Second, if the Plaintiff is worried about the lost opportunity to earn more money in the form of leap pay as a Special Agent, then such lost is offset by the opportunity he has now (and would not have as a Special Agent) to work beyond the age of fifty-seven to earn more money. Special Agents must retire at the age of fifty-seven. The same is not true for Revenue Agents. As a Revenue Agent, the Plaintiff may work beyond the age of fifty-seven to earn additional income. This opportunity to work more and earn more money offsets the Plaintiff’s lost opportunity to work more hours per week to earn more money in leap pay.

Nevertheless, the court believes that it would be equitable to include the leap pay comparison in the front pay award. As stated above, the front pay award only covers the period until June 2008, by which time the Plaintiff, with reasonable diligence, should be able to mitigate his damages by obtaining a grade 13 Revenue Agent position. The evidence shows that the Plaintiff may have to acquire new skill sets in order to obtain a promotion in grade.<sup>10</sup> Thus, the court believes there is some equity in granting the leap pay and treating the ten hours per week as time for the Plaintiff to train himself and acquire any new skills that he may need in order to obtain a promotion.

But once June 2008 arrives, he is expected to have mitigated his damages by having obtained a grade 13 position, and at that point, there will be no more justification for including the leap pay in the salary comparisons.

## **5. Basic Federal Employees' Retirement System ("FERS") Benefit**

In addition to front pay damages, the Plaintiff seeks the present value of lost retirement benefits, or basic FERS benefits. The issue of lost retirement benefits is more difficult for the court to determine, largely due to the highly speculative nature inherent to this area of benefits. The amount a government employee receives in basic

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<sup>10</sup> The Plaintiff is concerned that he would need to learn a new skill set if he were to seek a grade 13 position in the Large and Midsized Business Unit of the IRS. The court notes that while the majority of grade 13 positions are in the Large and Midsized Business Unit, a good number of grade 13 positions also exists in the Small Business Self Employed Unit, in which he is currently employed as a grade 12 agent. (See Def.'s Ex. 42.) In addition, while the Plaintiff claims that he will have to acquire some new skills if he were to switch Units, he has produced no evidence explaining the degree to which the skills will or will not transfer over between Units. Indeed, the court can infer that many of his job skills will transfer over to another Unit. Plus, the Plaintiff would have had to learn new skill sets had he become a Special Agent. In fact, learning new skill sets is an ongoing process for most jobs, new or not.

FERS benefits depends on factors such as when the employee retires, how much the employee is earning at retirement, and how long the employee lives—factors that the court has no way of knowing beforehand. On the other hand, due to the substantial increase in basic FERS benefits that would have been available to the Plaintiff if the discrimination had not taken place, the Plaintiff cannot be made whole without receiving damages for the lost chance of retiring with Special Agent level basic FERS benefits.

The Plaintiff asks the court to award him a lump sum amount, representing the net present value of the difference between the basic FERS benefit that would be available to him as a Special Agent and the benefit that is available to him as a Revenue Agent. Plaintiff's Exhibit 39, Appendix C consists of Dr. Bullock's calculation of the net present value of the Plaintiff's basic FERS benefits. Dr. Bullock's calculation assumes the following factors: (1) that the Plaintiff will never receive a promotion to grade 13, and will instead be at a grade 12, step 10 Revenue Agent position from 2018 through 2020; (2) that the Plaintiff is entitled to the benefit of the twenty-five percent (25%) leap pay adjustment in calculating his lost FERS benefit; (3) that the Plaintiff has a life expectancy of eighty-two (82) years,<sup>11</sup> giving the Plaintiff twenty-five years in

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<sup>11</sup> The Plaintiff supplies this figure as his life expectancy, and the Government never challenges the figure. It is the court's understanding that, in general, the life expectancy of an individual with diabetes is lower than an individual without diabetes. See, e.g., K. M. Venkat Narayan, M.D. et al., *Lifetime Risk for Diabetes Mellitus in the United States*, 290 J. Am. Med. Ass'n (JAMA) 1884 (2003); Jacqueline T. Jonker, M.S.C. et al., *Physical Activity and Life Expectancy With and Without Diabetes*, 29 Diabetes Care 38 (2006); American Diabetes Association, *The Dangerous Toll of Diabetes*, <http://www.diabetes.org/diabetes-statistics/dangerous-toll.jsp> (last visited June 13, 2006); Edwin Lee, M.D., *Diabetics Life Expectancy is Significantly Decreased Due to Heart Disease*, <http://www.winterhavenhospital.org/healthcon/h2yh/diabetics.html> (last visited June 13, 2006). Nonetheless, it is not necessary for the court to make a finding regarding the Plaintiff's life expectancy, and the court will not do so here.

retirement that he will receive the basic FERS benefit, and (4) that 6.52% represents the appropriate discount rate and 4.52% represents the appropriate real discount rate.<sup>12</sup>

The court's opinion does not support some of these assumptions. Specifically, the court has already explained its finding that the Plaintiff could mitigate his damages by receiving a grade 13 promotion as a Revenue Agent by June 2008. In addition, the court has explained why the Plaintiff should not benefit from the leap pay increase associated with the series 1811 Special Agent position. If the court were to award the Plaintiff a lump sum amount representing his basic FERS benefit loss, it would first have to recalculate that amount using the court's more appropriate assumptions (that the Plaintiff would be promoted to a grade 13, step position by June 2008 and that the Special Agent salary does not include leap pay).<sup>13</sup>

However, granting the Plaintiff a lump sum award now for retirement benefits that he has not yet earned, even if that lump sum amount was calculated to recognize appropriate mitigation, is still problematic. The lump sum award assumes he continues to work for the IRS until he retires at the age of fifty-seven (57), and that he lives exactly twenty-five (25) years after his retirement. These assumptions appear to be far too speculative to support an appropriate equitable remedy, and ultimately could provide a

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<sup>12</sup> The discount rate of 6.52% represents the weighted average interest rate charged by the federal government on noncorporate overpayments and underpayments from January 1, 1999 through March 31, 2006. (Pl.'s Ex. 39, App. B.)

<sup>13</sup> For the benefit of the parties, the court has attached what would be the adjusted calculations of the Plaintiff's lost basic FERS benefit, if awarded as a lump sum, as Appendix 2 to this entry. In addition, using the same method and average COLA used by the Plaintiff and his expert, the court created a salary table for grade 13, which does not include the leap pay adjustment, and has attached it to the entry as Appendix 3.

windfall to the Plaintiff. For example, what if the Plaintiff were to die before reaching the age of eighty-two (82)? Or before reaching retirement at age fifty-seven (57)? What if, after receiving the lump sum amount, the Plaintiff quits his Revenue Service job and finds employment in the private sector? He is not bound to stay with the IRS until retirement. In each of these scenarios, the Government would have paid the Plaintiff benefits that he never earned. On the other hand, what if the Plaintiff were to live ten or fifteen years beyond his life-expectancy? Under this scenario, the lump sum would fail to fully compensate the Plaintiff for the discrimination. Of course, the problem is that the lump sum amount is based on highly speculative assumptions, as explained above.

Instead of awarding a lump sum, the court can avoid many of these issues by ordering the IRS to change the manner in which it will compute the Plaintiff's basic FERS benefit upon his retirement. The basic FERS annuity benefit for most federal employees, including Revenue Agents, is 1% of the high-3 average pay<sup>14</sup> times the number of years of creditable service. (Pl.'s Ex. 39 at 2 (relying on 5 C.F.R. § 842.403(a)).) FERS provides a higher pension formula for special groups of employees—Firefighters, Law Enforcement Officers (Special Agents), and Air Traffic Controllers. As a Special Agent, the Plaintiff would have earned a basic FERS annual benefit equal to 1.7% of the high-3 average pay multiplied by his years of service which do not exceed 20, plus 1% of his high-3 average pay multiplied by his service exceeding 20 years. (Pl.'s Ex. 39 at 2-3 (relying on 5 C.F.R. § 842.405).) Instead of computing his

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<sup>14</sup> The employee's "high-3" average pay is determined by finding his highest basic pay over any three year period. Most often, the three year period prior to retirement will qualify as the highest basic pay period.

basic FERS benefit as the IRS would do if the Plaintiff retired as a Revenue Agent, the IRS will be ordered to compute the Plaintiff's basic FERS benefit at the time he retires from the IRS as if he would be retiring as a Special Agent. This mandate includes computing his basic FERS benefit at 1.7% of his actual high-3 average pay for the number of years, up to twenty, that he would have served as a Special Agent if instated in June 1999.

This is somewhat of a unique remedy. However, this is a unique case in which the court struggles with balancing the Plaintiff's right to be made whole and the Government's right to avoid speculative equitable remedies. There is a substantial difference between the Special Agent's and the Revenue Agent's basic FERS benefit. The Government's discrimination cost the Plaintiff the benefit of that difference and the court must do its best to prescribe a remedy to make the Plaintiff whole. Even if the Plaintiff mitigates his damages and obtains a grade 13 Revenue Agent position in a timely manner, he still suffers the loss of the Special Agent's more beneficial basic FERS benefit. At the same time, an appropriately calculated lump sum amount would ultimately be based on speculative assumptions, i.e. that the Plaintiff will live according to his life expectancy. Instead, ordering the IRS to pay the Plaintiff a retirement benefit, upon his actual retirement, based on his actual salary at the time and computing the benefit as though he had worked as a Special Agent since 1999, will take some of the speculation out of the equitable award.

## **6. Lost Vacation Time**

Finally, the Plaintiff asks the court to order the IRS to reinstate his lost vacation time for hours he devoted to this case. As illustrated in detail in Plaintiff's Exhibit 38, the Plaintiff claims that he had to expend 126 hours of vacation time pursuing his lawsuit over the last six years. When an employer discriminates against its employee, as occurred here, the employee ought not have to sacrifice the vacation time with an employer in order to reasonably pursue his discrimination claim against the same employer. Here, the listed purposes for the vacation time the Plaintiff had to use in pursuit of his claim appear reasonable. Accordingly, the court will order the IRS to reinstate 126 hours of the Plaintiff's vacation time.

### **III. CONCLUSIONS OF LAW**

1. The Government has not shown that the Plaintiff failed to mitigate his back pay damages. The Plaintiff is entitled to the full amount of stipulated back pay of **\$77,732.40**. If the Government chooses to disperse to the Plaintiff only the net amount of \$46,140.74, then the Government must pay the appropriate taxes and other withholdings, as listed on Defendant's Exhibit 53, to the appropriate third parties.
2. The Government must also pay the Plaintiff the prejudgment interest on the back pay damages. The gross prejudgment interest to date is **\$18,222.23**.
3. The Plaintiff's requested fifteen years of front pay is excessive because he can reasonably mitigate his damages by obtaining a promotion to a grade

13 Revenue Agent position by June 2008. The court accordingly entitles the Plaintiff to front pay from the 25th pay period of 2005 (December) through the 13th pay period of 2008 (June).

4. As part of his front pay damages, the Plaintiff's TSP loss consists of a loss of one percent in contribution by the IRS, not the requested five percent.
5. The net amount of front pay (including lost TSP contributions) due to the Plaintiff as a result of the Government's unlawful discrimination is **\$47,529.46**, discounted to present value as of June 19, 2006.
6. The court orders the IRS to pay the Plaintiff's basic FERS retirement benefit, upon the Plaintiff's actual retirement from the IRS, based on his actual high-3 average salary at the time of the retirement, but computed as though he had worked as a Special Agent since June 1999. This mandate includes computing his basic FERS benefit at 1.7% of his actual high-3 average pay for the number of years, up to twenty, that he would have served as a Special Agent if instated in June 1999. Any survivor benefits associated with his basic FERS retirement benefit must be distributed as though he had served as a Special Agent, but computed according to his actual salary.
7. The Government must restore to the Plaintiff the **126 hours of vacation time** spent in pursuit of his discrimination claim.

ALL OF WHICH IS ENTERED this 19th day of June 2006.

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John Daniel Tinder, Judge  
United States District Court

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Magistrate Judge William T. Lawrence

# APPENDIX 1

## FRONT PAY AND TSP BENEFITS UNTIL JUNE 2008

Pay Period	REVENUE AGENT		SPECIAL AGENT - WITH LEAP PAY		Diff. in Pay	TSP (1%)	Offset s	Net Future Wages/	PV (as of 6/19/2006 ) of Net
	Rev. Ag. Grade/S	Bi-Weekly Pay	Spec. Ag. Grade/S	Bi-Weekly Pay					
2005-2	12_6	\$2,716.00	13_1	\$3,472.19	\$756.19	\$ 7.56	\$81.26	\$ 682.49	\$ 706.10
2005-2					\$				
6	12_6	\$2,716.00	13_1	\$3,472.19	756.19	\$ 7.56	\$81.26	\$ 682.49	\$ 704.39
2006-1	12_6	\$2,803.23	13_1	\$3,571.65	\$768.42	\$ 7.68	\$82.79	\$ 693.31	\$ 713.82
2006-2	12_6	\$2,803.23	13_1	\$3,571.65	\$768.42	\$ 7.68	\$82.79	\$ 693.31	\$ 712.09
2006-3	12_6	\$2,803.23	13_1	\$3,571.65	\$768.42	\$ 7.68	\$82.79	\$ 693.31	\$ 710.36
2006-4	12_6	\$2,803.23	13_1	\$3,571.65	\$768.42	\$ 7.68	\$82.79	\$ 693.31	\$ 708.64
2006-5	12_6	\$2,803.23	13_1	\$3,571.65	\$768.42	\$ 7.68	\$82.79	\$ 693.31	\$ 706.92
2006-6	12_6	\$2,803.23	13_1	\$3,571.65	\$768.42	\$ 7.68	\$82.79	\$ 693.31	\$ 705.21
2006-7	12_7	\$2,883.31	13_1	\$3,571.65	\$688.34	\$ 6.88	\$76.02	\$ 619.20	\$ 628.29
2006-8	12_7	\$2,883.31	13_1	\$3,571.65	\$688.34	\$ 6.88	\$76.02	\$ 619.20	\$ 626.77
2006-9	12_7	\$2,883.31	13_1	\$3,571.65	\$688.34	\$ 6.88	\$76.02	\$ 619.20	\$ 625.25
2006-1									
0	12_7	\$2,883.31	13_1	\$3,571.65	\$688.34	\$ 6.88	\$76.02	\$ 619.20	\$ 623.73
2006-1									
1	12_7	\$2,883.31	13_1	\$3,571.65	\$688.34	\$ 6.88	\$76.02	\$ 619.20	\$ 622.22

2006-1 2	12_7	\$2,883.31	13_1	\$3,571.65	\$688.34	\$ 6.88	\$76.02	\$ 619.20	\$ 620.71
2006-1 3	12_7	\$2,883.31	13_1	\$3,571.65	\$688.34	\$ 6.88	\$76.02	\$ 619.20	\$ 619.20
2006-1 4	12_7	\$2,883.31	13_1	\$3,571.65	\$688.34	\$ 6.88	\$76.02	\$ 619.20	\$ 617.70
2006-1 5	12_7	\$2,883.31	13_1	\$3,571.65	\$688.34	\$ 6.88	\$76.02	\$ 619.20	\$ 616.20
2006-1 6	12_7	\$2,883.31	13_1	\$3,571.65	\$688.34	\$ 6.88	\$76.02	\$ 619.20	\$ 614.70
2006-1 7	12_7	\$2,883.31	13_1	\$3,571.65	\$688.34	\$ 6.88	\$76.02	\$ 619.20	\$ 613.21
2006-1 8	12_7	\$2,883.31	13_1	\$3,571.65	\$688.34	\$ 6.88	\$76.02	\$ 619.20	\$ 611.72
2006-1 9	12_7	\$2,883.31	13_1	\$3,571.65	\$688.34	\$ 6.88	\$76.02	\$ 619.20	\$ 610.24
2006-2 0	12_7	\$2,883.31	13_1	\$3,571.65	\$688.34	\$ 6.88	\$76.02	\$ 619.20	\$ 608.76
2006-2 1	12_7	\$2,883.31	13_1	\$3,571.65	\$688.34	\$ 6.88	\$76.02	\$ 619.20	\$ 607.28
2006-2 2	12_7	\$2,883.31	13_1	\$3,571.65	\$688.34	\$ 6.88	\$76.02	\$ 619.20	\$ 605.81
2006-2 3	12_7	\$2,883.31	13_1	\$3,571.65	\$688.34	\$ 6.88	\$76.02	\$ 619.20	\$ 604.34
2006-2 4	12_7	\$2,883.31	13_2	\$3,690.69	\$807.38	\$ 8.07	\$86.68	\$ 728.78	\$ 709.56
2006-2 5	12_7	\$2,883.31	13_2	\$3,690.69	\$807.38	\$ 8.07	\$86.68	\$ 728.78	\$ 707.84

## APPENDIX 1

2006-2									
6	12_7	\$2,883.31	13_2	\$3,690.69	\$807.38	\$ 8.07	\$86.68	\$ 728.78	\$ 706.12
2007-1	12_7	\$2,993.15	13_2	\$3,831.31	\$838.16	\$ 8.38	\$89.98	\$ 756.56	\$ 731.26
2007-2	12_7	\$2,993.15	13_2	\$3,831.31	\$838.16	\$ 8.38	\$89.98	\$ 756.56	\$ 729.49
2007-3	12_7	\$2,993.15	13_2	\$3,831.31	\$838.16	\$ 8.38	\$89.98	\$ 756.56	\$ 727.72
2007-4	12_7	\$2,993.15	13_2	\$3,831.31	\$838.16	\$ 8.38	\$89.98	\$ 756.56	\$ 725.95
2007-5	12_7	\$2,993.15	13_2	\$3,831.31	\$838.16	\$ 8.38	\$89.98	\$ 756.56	\$ 724.19
2007-6	12_7	\$2,993.15	13_2	\$3,831.31	\$838.16	\$ 8.38	\$89.98	\$ 756.56	\$ 722.43
2007-7	12_7	\$2,993.15	13_2	\$3,831.31	\$838.16	\$ 8.38	\$89.98	\$ 756.56	\$ 720.68
2007-8	12_7	\$2,993.15	13_2	\$3,831.31	\$838.16	\$ 8.38	\$89.98	\$ 756.56	\$ 718.93
2007-9	12_7	\$2,993.15	13_2	\$3,831.31	\$838.16	\$ 8.38	\$89.98	\$ 756.56	\$ 717.19
2007-1									
0	12_7	\$2,993.15	13_2	\$3,831.31	\$838.16	\$ 8.38	\$89.98	\$ 756.56	\$ 715.45
2007-1									
1	12_7	\$2,993.15	13_2	\$3,831.31	\$838.16	\$ 8.38	\$89.98	\$ 756.56	\$ 713.71
2007-1									
2	12_7	\$2,993.15	13_2	\$3,831.31	\$838.16	\$ 8.38	\$89.98	\$ 756.56	\$ 711.98
2007-1									
3	12_7	\$2,993.15	13_2	\$3,831.31	\$838.16	\$ 8.38	\$89.98	\$ 756.56	\$ 710.25
2007-1									
4	12_7	\$2,993.15	13_2	\$3,831.31	\$838.16	\$ 8.38	\$89.98	\$ 756.56	\$ 708.53
2007-1									
5	12_7	\$2,993.15	13_2	\$3,831.31	\$838.16	\$ 8.38	\$89.98	\$ 756.56	\$ 706.81
2007-1									
6	12_7	\$2,993.15	13_2	\$3,831.31	\$838.16	\$ 8.38	\$89.98	\$ 756.56	\$ 705.09

2007-1 7	12_7	\$2,993.15	13_2	\$3,831.31	\$838.16	\$ 8.38	\$89.98	\$ 756.56	\$ 703.38
2007-1 8	12_7	\$2,993.15	13_2	\$3,831.31	\$838.16	\$ 8.38	\$89.98	\$ 756.56	\$ 701.68
2007-1 9	12_7	\$2,993.15	13_2	\$3,831.31	\$838.16	\$ 8.38	\$89.98	\$ 756.56	\$ 699.97
2007-2 0	12_7	\$2,993.15	13_2	\$3,831.31	\$838.16	\$ 8.38	\$89.98	\$ 756.56	\$ 698.28
2007-2 1	12_7	\$2,993.15	13_2	\$3,831.31	\$838.16	\$ 8.38	\$89.98	\$ 756.56	\$ 696.58
2007-2 2	12_7	\$2,993.15	13_2	\$3,831.31	\$838.16	\$ 8.38	\$89.98	\$ 756.56	\$ 694.89
2007-2 3	12_7	\$2,993.15	13_2	\$3,831.31	\$838.16	\$ 8.38	\$89.98	\$ 756.56	\$ 693.21
2007-2 4	12_7	\$2,993.15	13_3	\$3,954.91	\$961.76	\$ 9.62	\$01.04	\$ 870.33	\$ 795.52
2007-2 5	12_7	\$2,993.15	13_3	\$3,954.91	\$961.76	\$ 9.62	\$01.04	\$ 870.33	\$ 793.59
2007-2 6	12_7	\$2,993.15	13_3	\$3,954.91	\$961.76	\$ 9.62	\$01.04	\$ 870.33	\$ 791.66
2008-1	12_7	\$3,107.19	13_3	\$4,105.58	\$998.39	\$ 9.98	\$04.89	\$ 903.48	\$ 819.82
2008-2	12_7	\$3,107.19	13_3	\$4,105.58	\$998.39	\$ 9.98	\$04.89	\$ 903.48	\$ 817.83
2008-3	12_7	\$3,107.19	13_3	\$4,105.58	\$998.39	\$ 9.98	\$04.89	\$ 903.48	\$ 815.85
2008-4	12_7	\$3,107.19	13_3	\$4,105.58	\$998.39	\$ 9.98	\$04.89	\$ 903.48	\$ 813.87
2008-5	12_7	\$3,107.19	13_3	\$4,105.58	\$998.39	\$ 9.98	\$04.89	\$ 903.48	\$ 811.89
2008-6	12_7	\$3,107.19	13_3	\$4,105.58	\$998.39	\$ 9.98	\$04.89	\$ 903.48	\$ 809.92
2008-7	12_7	\$3,107.19	13_3	\$4,105.58	\$998.39	\$ 9.98	\$04.89	\$ 903.48	\$ 807.96
2008-8	12_7	\$3,107.19	13_3	\$4,105.58	\$998.39	\$ 9.98	\$04.89	\$ 903.48	\$ 806.00

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2008-9	12_7	\$3,107.19	13_3	\$4,105.58	\$998.39	\$ 9.98	\$04.89	\$ 903.48	\$ 804.04
2008-10	12_7	\$3,107.19	13_3	\$4,105.58	\$998.39	\$ 9.98	\$04.89	\$ 903.48	\$ 802.09
2008-11	12_7	\$3,107.19	13_3	\$4,105.58	\$998.39	\$ 9.98	\$04.89	\$ 903.48	\$ 800.14
2008-12	12_7	\$3,107.19	13_3	\$4,105.58	\$998.39	\$ 9.98	\$04.89	\$ 903.48	\$ 798.20
2008-13	12_7	\$3,107.19	13_3	\$4,105.58	\$998.39	\$ 9.98	\$04.89	\$ 903.48	\$ 796.26

**Total Net Present Value of Front Pay/TSP at 6.52% as of June  
19, 2006:**

**\$7,529.46**

## APPENDIX 2

### HIGH-3 AVERAGE SALARY AND NET PRESENT VALUE BASIC FERS BENEFIT (LUMP

Pay Period	REVENUE AGENT			SPECIAL AGENT - NO LEAP PAY		
	Rev. Ag. Grade/Ste	Bi-Weekly Pay	Annual Compensatio	Spec. Ag. Grade/Ste	Bi-Weekly Pay	Annual Compensatio
2018-1	13/7	\$ 5,370.36		13/8	\$ 5,513.52	
2018-2	13/7	\$ 5,370.36		13/8	\$ 5,513.52	
2018-3	13/7	\$ 5,370.36		13/8	\$ 5,513.52	
2018-4	13/7	\$ 5,370.36		13/8	\$ 5,513.52	
2018-5	13/7	\$ 5,370.36		13/8	\$ 5,513.52	
2018-6	13/7	\$ 5,370.36		13/8	\$ 5,513.52	
2018-7	13/7	\$ 5,370.36		13/8	\$ 5,513.52	
2018-8	13/7	\$ 5,370.36		13/8	\$ 5,513.52	
2018-9	13/7	\$ 5,370.36		13/8	\$ 5,513.52	
2018-10	13/7	\$ 5,370.36		13/8	\$ 5,513.52	
2018-11	13/7	\$ 5,370.36		13/8	\$ 5,513.52	
2018-12	13/7	\$ 5,370.36		13/8	\$ 5,513.52	
2018-13	13/7	\$ 5,370.36		13/8	\$ 5,513.52	
2018-14	13/7	\$ 5,370.36		13/8	\$ 5,513.52	
2018-15	13/7	\$ 5,370.36		13/8	\$ 5,513.52	
2018-16	13/7	\$ 5,370.36		13/8	\$ 5,513.52	
2018-17	13/7	\$ 5,370.36		13/8	\$ 5,513.52	
2018-18	13/7	\$ 5,370.36		13/8	\$ 5,513.52	
2018-19	13/7	\$ 5,370.36		13/8	\$ 5,513.52	
2018-20	13/7	\$ 5,370.36		13/8	\$ 5,513.52	
2018-21	13/7	\$ 5,370.36		13/8	\$ 5,513.52	
2018-22	13/7	\$ 5,370.36		13/8	\$ 5,513.52	
2018-23	13/7	\$ 5,370.36		13/8	\$ 5,513.52	
2018-24	13/7	\$ 5,370.36		13/8	\$ 5,513.52	
2018-25	13/7	\$ 5,370.36		13/8	\$ 5,513.52	
2018-26	13/7	\$ 5,370.36	\$139,629.36	13/8	\$ 5,513.52	\$143,351.52
2019-1	13/7	\$ 5,574.97		13/8	\$ 5,729.82	
2019-2	13/7	\$ 5,574.97		13/8	\$ 5,729.82	
2019-3	13/7	\$ 5,574.97		13/8	\$ 5,729.82	
2019-4	13/7	\$ 5,574.97		13/8	\$ 5,729.82	
2019-5	13/7	\$ 5,574.97		13/8	\$ 5,729.82	
2019-6	13/7	\$ 5,574.97		13/8	\$ 5,729.82	
2019-7	13/7	\$ 5,574.97		13/8	\$ 5,729.82	

2019-8	13/7	\$ 5,574.97		13/8	\$ 5,729.82	
2019-9	13/7	\$ 5,574.97		13/8	\$ 5,729.82	
2019-10	13/7	\$ 5,574.97		13/8	\$ 5,729.82	
2019-11	13/7	\$ 5,574.97		13/8	\$ 5,729.82	
2019-12	13/8	\$ 5,729.82		13/8	\$ 5,729.82	
2019-13	13/8	\$ 5,729.82		13/8	\$ 5,729.82	
2019-14	13/8	\$ 5,729.82		13/8	\$ 5,729.82	
2019-15	13/8	\$ 5,729.82		13/8	\$ 5,729.82	
2019-16	13/8	\$ 5,729.82		13/8	\$ 5,729.82	
2019-17	13/8	\$ 5,729.82		13/8	\$ 5,729.82	
2019-18	13/8	\$ 5,729.82		13/8	\$ 5,729.82	
2019-19	13/8	\$ 5,729.82		13/8	\$ 5,729.82	
2019-20	13/8	\$ 5,729.82		13/8	\$ 5,729.82	
2019-21	13/8	\$ 5,729.82		13/8	\$ 5,729.82	
2019-22	13/8	\$ 5,729.82		13/8	\$ 5,729.82	
2019-23	13/8	\$ 5,729.82		13/8	\$ 5,729.82	
2019-24	13/8	\$ 5,729.82		13/8	\$ 5,729.82	
2019-25	13/8	\$ 5,729.82		13/8	\$ 5,729.82	
2019-26	13/8	\$ 5,729.82	\$147,271.97	13/8	\$ 5,729.82	\$148,975.32
2020-1	13/8	\$ 5,948.12		13/8	\$ 5,948.12	
2020-2	13/8	\$ 5,948.12		13/8	\$ 5,948.12	
2020-3	13/8	\$ 5,948.12		13/8	\$ 5,948.12	
2020-4	13/8	\$ 5,948.12		13/8	\$ 5,948.12	
2020-5	13/8	\$ 5,948.12		13/8	\$ 5,948.12	
2020-6	13/8	\$ 5,948.12		13/8	\$ 5,948.12	
2020-7	13/8	\$ 5,948.12		13/8	\$ 5,948.12	
2020-8	13/8	\$ 5,948.12		13/8	\$ 5,948.12	
2020-9	13/8	\$ 5,948.12		13/8	\$ 5,948.12	
2020-10	13/8	\$ 5,948.12		13/8	\$ 5,948.12	
2020-11	13/8	\$ 5,948.12		13/8	\$ 5,948.12	
2020-12	13/8	\$ 5,948.12		13/8	\$ 5,948.12	
2020-13	13/8	\$ 5,948.12		13/8	\$ 5,948.12	
2020-14	13/8	\$ 5,948.12		13/8	\$ 5,948.12	
2020-15	13/8	\$ 5,948.12		13/8	\$ 5,948.12	
2020-16	13/8	\$ 5,948.12		13/8	\$ 5,948.12	
2020-17	13/8	\$ 5,948.12		13/8	\$ 5,948.12	
2020-18	13/8	\$ 5,948.12		13/8	\$ 5,948.12	
2020-19	13/8	\$ 5,948.12		13/8	\$ 5,948.12	
2020-20	13/8	\$ 5,948.12		13/8	\$ 5,948.12	
2020-21	13/8	\$ 5,948.12		13/8	\$ 5,948.12	
2020-22	13/8	\$ 5,948.12		13/8	\$ 5,948.12	

2020-23	13/8	\$ 5,948.12		13/8	\$ 5,948.12	
2020-24	13/8	\$ 5,948.12		13/9	\$ 6,108.86	
2020-25	13/8	\$ 5,948.12		13/9	\$ 6,108.86	
2020-26	13/8	\$ 5,948.12	\$154,651.12	13/9	\$ 6,108.86	\$155,133.34

High-3 Year Average Pay:	\$147,184.15	\$149,153.39
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Basic FERS Annuity:	\$50,660.78	\$72,220.07
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Basic FERS Annuity Difference:		\$21,559.29
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Life Expectancy:	82 Years
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Years in Retirement starting at age 57:	25 Years
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Present Value of Basic FERS annuity Difference at age 57 assuming a real discount rate of 4.52% (6.52%-2.0%):	\$319,028.56
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Net Present Value (6/19/2006) of present value of Basic FERS annuity difference at age 57 (\$319,028.56) assuming a discount	\$125,819.37
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## APPENDIX 3

### REVENUE AGENT/SPECIAL AGENT (W/O LEAP PAY) SALARY TABLE - GRADE 13 (ASSUMES 3.81% COLA)

	<u>GS-13/1</u>	<u>GS-13/2</u>	<u>GS-13/3</u>	<u>GS-13/4</u>	<u>GS-13/5</u>	<u>GS-13/6</u>	<u>GS-13/7</u>	<u>GS-13/8</u>	<u>GS-13/9</u>	<u>GS-13/10</u>
2006	\$74,291.00	\$76,767.00	\$79,243.00	\$81,719.00	\$84,195.00	\$86,671.00	\$89,147.00	\$91,623.00	\$94,099.00	\$96,575.00
										\$100,254.5
2007	\$77,121.49	\$79,691.82	\$82,262.16	\$84,832.49	\$87,402.83	\$89,973.17	\$92,543.50	\$95,113.84	\$97,684.17	1
									\$101,405.9	\$104,074.2
2008	\$80,059.82	\$82,728.08	\$85,396.35	\$88,064.61	\$90,732.88	\$93,401.14	\$96,069.41	\$98,737.67	4	0
								\$102,499.5	\$105,269.5	\$108,039.4
2009	\$83,110.09	\$85,880.02	\$88,649.95	\$91,419.87	\$94,189.80	\$96,959.73	\$99,729.65	8	1	3
						\$100,653.8	\$103,529.3	\$106,404.8	\$109,280.2	\$112,155.7
2010	\$86,276.59	\$89,152.05	\$92,027.51	\$94,902.97	\$97,778.43	9	5	1	7	3
					\$101,503.7	\$104,488.8	\$107,473.8	\$110,458.8	\$113,443.8	\$116,428.8
2011	\$89,563.73	\$92,548.74	\$95,533.76	\$98,518.77	9	1	2	4	5	7
				\$102,272.3	\$105,371.0	\$108,469.8	\$111,568.5	\$114,667.3	\$117,766.0	\$120,864.8
2012	\$92,976.11	\$96,074.85	\$99,173.59	4	8	3	7	2	6	1
			\$102,952.1	\$106,168.9	\$109,385.7	\$112,602.5	\$115,819.3	\$119,036.1	\$122,252.9	\$125,469.7
2013	\$96,518.50	\$99,735.30	1	2	2	3	4	4	5	6
	\$100,195.8	\$103,535.2	\$106,874.5	\$110,213.9	\$113,553.3	\$116,892.6	\$120,232.0	\$123,571.4	\$126,910.7	\$130,250.1
2014	5	2	8	5	2	9	5	2	9	5
	\$104,013.3	\$107,479.9	\$110,946.5	\$114,413.1	\$117,879.7	\$121,346.3	\$124,812.8	\$128,279.4	\$131,746.0	\$135,212.6
2015	1	1	1	0	0	0	9	9	9	8
	\$107,976.2	\$111,574.8	\$115,173.5	\$118,772.2	\$122,370.9	\$125,969.5	\$129,568.2	\$133,166.9	\$136,765.6	\$140,364.2
2016	2	9	7	4	2	9	7	4	1	9
	\$112,090.1	\$115,825.9	\$119,561.6	\$123,297.4	\$127,033.2	\$130,769.0	\$134,504.8	\$138,240.6	\$141,976.3	\$145,712.1
2017	1	0	8	6	5	3	2	0	8	7

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		\$116,360.7	\$120,238.8	\$124,116.9	\$127,995.1	\$131,873.2	\$135,751.3	\$139,629.4	\$143,507.5	\$147,385.6	\$151,263.8
2018	5	6	8	0	1	3	5	7	8	0	
		\$120,794.0	\$124,819.9	\$128,845.8	\$132,871.7	\$136,897.5	\$140,923.4	\$144,949.3	\$148,975.2	\$153,001.0	\$157,026.9
2019	9	6	4	1	8	6	3	0	8	5	
		\$125,396.3	\$129,575.6	\$133,754.8	\$137,934.1	\$142,113.3	\$146,292.6	\$150,471.9	\$154,651.1	\$158,830.4	\$163,009.6
2020	5	0	6	2	8	4	0	6	2	8	
		\$130,173.9	\$134,512.4	\$138,850.9	\$143,189.4	\$147,527.9	\$151,866.3	\$156,204.8	\$160,543.3	\$164,881.8	\$169,220.3
2021	5	4	2	1	0	9	8	7	6	5	